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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,451	02/26/2004	Alexandre A. N. Baptista	37469-8041.US01	5173

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EXAMINER
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HARMON, CHRISTOPHER R

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 07/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/789,451

Applicant(s)

BAPTISTA, ALEXANDRE A. N.

Examiner

Christopher R. Harmon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13-17, 23-28 and 34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-17, 23, 24, 26-28 and 34 is/are rejected.
- 7) ☐ Claim(s) 25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/25/06; 5/19/06</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Kristen (US 6,256,968).

Kristen discloses a vacuum packaging appliance comprising vacuum source 52; base 24 including removable trough 30; lid 26 operatively associated with base 24 defining a vacuum chamber for receiving an open end of a container 22 and coupled to vacuum source; heat sealing mechanism 60; latching element 32; see figures 2 and 4. Trough 30 is a separate element than base 24 therefore is removable; see exploded view of the construction of all elements in figure 2.

3. Claims 13-15, 23-24, 26, 28, and 34 are rejected under 35 U.S.C. 102(a) and (e) as being anticipated by Patterson et al. (US 7,003,928).

Patterson et al. disclose an apparatus and method for evacuating a container comprising base 2; lid 10; vacuum source 11; removable trough 4; latching element 34; tongue (on end of trough 4; see figure 2) and corresponding groove in base; bay door 6; see figures 1-2. Vacuum source is coupled to an end opening of a container for evacuation. Contaminants are captured in trough 4, which is then removed when desired for cleaning. Sensor 501 senses pressure/airflow therefore would sense a contaminant level within the trough. Bay door 6 is opened and closed during the operation and allowing removal of trough 4.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 23 is rejected under 35 U.S.C. 102(b) as anticipated by Kristen (US 6,256,968) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kristen (US 6,256,968) in view of Applicant's Admitted Prior Art (AAPA).

Kristen discloses inserting a removable trough 30; coupling an open end of container 22 with vacuum source 52; engaging lid 26 and base 24 for the evacuation of the package 22. Kristen does not directly disclose capturing contaminants in the trough 30, however during the above described operation trough 30 would inherently "catch" any contaminants present. Regardless of the omission from the disclosure of Kristen, it would have been obvious to one of ordinary skill in the art to capture contaminants in

the trough of the invention to Kristen in view of AAPA; see specification, pg 3, paragraph 0007, lines 5+.

6. Claims 15-17 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kristen (US 6,256,968) in view of Bullard (US 5,515,773).

Kristen does not directly disclose trough 30 removable via tongue and groove sliding capability or a handle structure (hidden or otherwise), however Bullard solves a similar unwanted condensation problem from a steam chamber with collection trough 40 comprising a handle hidden from view behind a door structure in the base; see figure 2. The trough is removed by a tongue and groove sliding construction and then cleaned of contaminants. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the removable trough as taught by Bullard in the invention to Kristen in order to easily empty any undesirable residue/condensation. Note that the language of claim 17 "can be hidden" only requires the trough to be capable of being hidden behind a door. A positive recitation of the claim elements ie. door in relation to handle and trough is suggested to further clarify the claimed invention.

Regarding claim 28, Kristen alternatively further modified by AAPA see above paragraph 6.

7. Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patterson et al. (US 7,003,928) in view of Bullard (US 5,515,773).

Patterson et al. do not directly disclose a handle for sliding trough, however as noted supra Bullard teaches handled trough 40. It would have been obvious to one of

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ordinary skill in the art at the time of the invention to include a handled sliding trough as taught by Bullard in the invention to Patterson et al. for removing the trough for cleaning.

8. Claims 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kristen (US 6,256,968) or Patterson et al. (US 7,003,928) in view of Ben-David et al. (US 5,889,684).

Kristen while providing for monitoring the vacuum level does not directly disclose sensing a contaminant level in the removable trough 30. Likewise Patterson et al. do not directly disclose providing a warning feedback as claimed. Ben-David et al. however, disclose a method of heating/cooling liquid comprising capturing contaminants in drip tray/trough 36 and sensing the level within by sensor 65. The level sensor 65 is connected to computerized control circuit 60 for providing feedback to a user; see figures 1 and 4. It would have been obvious to one of ordinary skill in the art to provide the monitoring system of Ben-David for sensing the level of contaminants in the trough and providing feedback in the invention to Kristen and/or Patterson et al. in order to monitor and maintain an unobstructed vacuum chamber. Note that Kristen is alternatively further modified by AAPA see above paragraph 6.

#### ***Allowable Subject Matter***

9. Claim 25 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

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10. Applicant's arguments filed 4/25/06 have been fully considered but they are not persuasive. The grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language such as "adapted to", "useful for", that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. The trough of Kristen is fully capable of being removed therefore is considered "removable". Note that during patent examination, the claims are given the broadest reasonable interpretation consistent with the specification. See *In re Morris*, 127 F.3d 1048, 44 USPQ2d 1023 (Fed. Cir. 1997). See MPEP § 904.1.

### ***Conclusion***

11. Applicant's amendment and submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 5/19/06 necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b); § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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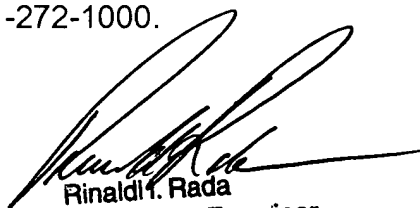
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Harmon whose telephone number is (571) 272-4461. The examiner can normally be reached on Monday-Friday from 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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